
carrying out the provisions of the Act on the State Government. Local authorities even if autonomous cannot violate the directions of the Government. Of course, it may be permissible for them to point out the relevant facts for the consideration of the competent authority so as to enable them to claim exemption etc. The Government is entitled to consider those facts and decide about the matter. However, the Board cannot claim the power or the right to ignore the directions of the State Government.

(38) No other point has been raised.

(39) In view of the above, the writ petition is allowed. The Respondent—Board is directed to consider the petitioner's claim against an existing vacancy or any vacancy that may become available in the immediate future. The needful shall be done within two months from the date of receipt of a certified copy of this order. In the circumstances, there will be no order as to costs.

J.S.T.

Before R.S. Mongia and J.S. Narang, JJ.

DR. S.S. BAINS,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

CWP No. 5611 of 1999

13th September, 1999

Punjab Civil Service Rules, Vol. I, Part I—Rl. 10 (2)—Punjab Agricultural Service (Class I) Rules, 1974—Rl. 12(1)—Transfer without consent from cadre post of Director Agriculture, Punjab to foreign service as Chairman-cum-Managing Director, PUNSEED—Such transfer accepted and not objected to—Tacit consent inferred—Rule 10.2 protecting a Govt. servant from transfer without consent—Second proviso to Rl. 10.2 giving unfettered power to transfer a Government employee in public interest—Checks and balances incorporated in Rl. 10—Second proviso is not ultra vires Rl. 10.2—Government appointing third party as Chairman PUNSEED—Petitioner ordered to continue as M.D. only—This order impugned on the plea that the petitioner's consent taken to continue as only M.D. PUNSEED at the time of extension—Prayer made for repatriation to parent department of Agriculture on his substantive post of Director Agriculture—Order requiring the petitioner to continue on the post of M.D. is not sustainable since the order passed without seeking verbal or written consent—No public interest involved or shown

from record—Orders, therefore, liable to be quashed—Government left free to post the petitioner in accordance with law.

Held, that the second proviso to rule 10(2)(a) is *intra vires* and definitely falls with the scheme of the rules as the proviso is self contained with the restrictions and restraints and is complimentary to the first proviso by way of diluting absolute right in favour of the employee. Fear of absolutism both ways has been put under check and balance.

(Para 17)

Further held, that even if no written consent was taken from the petitioner by the Government but the very fact that the petitioner joined on the post of Chairman-cum-Managing Director of PUNSEED without any demur, a tacit consent can be safely inferred.

(Para 19)

Further held, that for the view we are taking on the question of 'public interest' in sending the petitioner on deputation to PUNSEED as Managing Director, it is not necessary to go into the question whether the post of Managing Director, PUNSEED, is lower in rank and status than the post of Director, Agriculture. Moreover, both the sides have not been able to give sufficient data or clear cut rules/instructions in this regard to answer this question.

(Para 22)

Further held, that the perusal of the files produced by the State do not support the contention of the learned counsel for the respondents as the decision for sending the petitioner on deputation/transfer to the said post is not based on the State policy. Thus, the contention of the learned counsel for the respondents that the petitioner could not be retained on the post of Director Agriculture as Head of the Department beyond a period of five years as per the policy of the Government is not well founded. If the incumbent on a post as Head of the Department has sufficient period i.e. beyond five years till the age of superannuation, no executive instructions can reduce his period which is available to the incumbent as per the circumstances.

(Para 26)

Further held, that so far as the question of couching the order of transfer under public interest is concerned, the same is not supportable and it becomes clear from the perusal of files produced by the respondents wherein not a word has been mentioned that the petitioner was being transferred from the post of Director Agriculture to the post

of Chairman-cum-Managing Director in public interest but in response to the initial order of transfer dated 11th June, 1997 passed by the Government, no objection was raised by the petitioner and he had joined the said post without any demur, as such tacit consent is inferred. So far as the order of extension as Chairman-cum-Managing Director, is concerned, which has been passed on 17th July, 1998 for granting first extension for one year, has to be taken as a fresh order but again the petitioner having continued on the post of Chairman-cum-Managing Director, the tacit consent is inferred. It is only the subsequent order,—*vide* which the extension had been given, rather an order had been passed, asking the petitioner to continue only in the office of Managing Director PUNSEED, the question of consent and passing the order in public interest became an issue. It is borne out from the record that no consent was taken from the petitioner asking him to continue in the office of Managing Director, PUNSEED. In fact the petitioner had asked to be repatriated to his parent Department of Agriculture on his substantive post of Director Agriculture, Punjab. It is at this stage, the Government could exercise its powers under the second proviso which is definitely tainted with “public interest” but no public interest has either been spelt out in the files or in the impugned order. Not a word has been said as to what public interest would be served by sending or keeping the petitioner as Managing Director of PUNSEED. Thus, it is obvious that the impugned order dated 10th June, 1999 passed by the Financial Commissioner and Secretary to Government of Punjab, Department of Agriculture,—*vide* which the petitioner had been asked to continue on the post of Managing Director till further orders with effect from 12th June, 1999, is not sustainable as having not been passed in public interest or after obtaining consent of the petitioner.

(Para 27)

Rajiv Atma Ram, Advocate, for the petitioner.

P.S. Chhina, Sr. DAG, Punjab for respondents No. 1 and 2.

Surya Kant, Advocate for respondent No. 3.

JUDGMENT

J.S. Narang, J.

(1) The petitioner is a direct recruit under the Punjab Agricultural Service (Class I) Rules, 1974 (hereinafter referred to as the 1974 Rules). He was promoted as Joint Director in the year 1984 and thereafter was selected and appointed as Director Marketing in the Department

of Agriculture, Punjab,—*vide* order dated 1st September, 1988. It was,—*vide* order dated 3rd January, 1991 that the petitioner was selected and promoted to the post of Director Agriculture. The appointment was made in officiating capacity in the scale of Rs. 5900-6700. Subsequently,—*vide* order dated 20th January, 1993, it had been certified by the Government of Punjab that the petitioner had completed the period of probation satisfactorily with effect from 3rd January, 1991 as envisaged under Rule 12(1) of the 1974 Rules.

(2) The petitioner was sent on deputation as Chairman-cum-Managing Director, Punjab State Seeds Corporation Limited, a Government Undertaking/Government Company (hereinafter referred to as PUNSEED),—*vide* order dated 11th June, 1997 passed by the Govt. and in the order it had been stated that the petitioner shall be on deputation with PUNSEED for one year in the first instance on usual terms and conditions of the Government of Punjab. The period of deputation was further extended and the petitioner was asked to continue on deputation on the post of Chairman-cum-Managing Director for one more year and the said period was to expire on 11th June, 1999.

(3) On 7th January, 1999, the Govt. of Punjab appointed Shri Ashok Dhir, an Advocate practising in the Subordinate Courts at Gidderbaha as Chairman of PUNSEED in place of the petitioner. It would be appropriate to mention here that,—*vide* the same order Shri Ashok Dhir, Advocate, had been inducted first as a Director on the Board of Directors of PUNSEED before being appointed as Chairman of PUNSEED. He joined as such on 18th January, 1999 in place of the petitioner, and the petitioner was asked to continue on the post of Managing Director in view of the extension granted to him by the Government upto 11th June, 1999. It was this alleged detrimental change which led the petitioner to file the present petition on 26th April, 1999 questioning his removal from the post of Chairman of PUNSEED and sought issuance of a writ, order or direction quashing the impugned order and/or direction to the State of Punjab for allowing him to join as Director Agriculture, his substantive post in the Agriculture Department, or in the alternative be allowed to continue as Chairman-cum-Managing Director of PUNSEED.

(4) Notice of motion was issued. Govt. of Punjab filed reply to the petitioner.

(5) The respondents raised objection to the claim of the petitioner to the effect that the post of Director Agriculture Punjab is a selection post and the petitioner cannot claim posting as a matter of right to the

post of Director Agriculture. No doubt he had been selected to that post and had successfully completed his probation period but thereafter he had been sent on transfer/ deputation to the post of Chairman-cum-Managing Director PUNSEED. The Govt. has taken a firm stand that the petitioner had not been asked to revert back to his parent department but had been asked to continue on the post of Managing Director of PUNSEED. Apart from this, the plea has been taken that the Vigilance Bureau of Punjab has registered a criminal case at Patiala against the petitioner in respect of his role as Director Agriculture in recommending the payment of subsidy to the manufacturers of Fertilizer and even otherwise the petitioner had completed more than five years tenure as Director Agriculture and as per policy of the Govt./Govt. instructions, no person can be allowed to continue as Head of the Office beyond a period of five years. The State has further taken the plea that the petitioner had been shifted from the post of Director Agriculture Punjab after completing five years tenure on the said post to the post of Chairman-cum-Managing Director PUNSEED. The State of Punjab has further submitted that asking the petitioner to continue on the post of Managing Director PUNSEED is in no way reduction in rank held by him as Director Agriculture Punjab. In support of this contention, the State of Punjab has drawn our attention to the list of officers of IAS cadre who had been holding the post of Managing Director PUNSEED right from 1976 to 1993. On our asking as to who were the Chairmen at the relevant time, information was given as to who were the Chairmen at the relevant times. A perusal of the list shows that a senior officer had been holding the office of Chairman of PUNSEED and a junior officer in rank, though of IAS cadre, was holding the post of a Managing Director PUNSEED. It is also borne out from the record that prior to the amendment of Articles of Association of PUNSEED, Development Commissioner Agriculture used to be the Ex-officio Chairman of PUNSEED and subsequently the said Article was amended w.e.f. 12th May, 1993 and the appointment of Chairman was left to the discretion of Govt. of Punjab. It is obvious that by virtue of the said Article upto 12th May, 1993 the office of Chairman was held by senior IAS Officers by virtue of their designation as Development Commissioner.

(6) It shall be appropriate to mention here that Dr. Mewa Singh Sunar who was holding current duty charge of the post of Director Agriculture, Punjab, Chandigarh filed an application under Order 1 rule 10 read with section 151 C.P.C. for being impleaded as respondent No. 3. However, notice of the said application was given to the counsel for the petitioner and subsequently, counsel for Dr. M.S. Sunar, was allowed to address this Court on the merits of the petition at the time of

arguments after impleadment in the array of respondents as respondent No. 3.

(7) It may be observed here that after the filing of the petition, the State Government had passed another order dated 10th June, 1999 asking the petitioner to continue on deputation as Managing Director of PUNSEED till further orders.

(8) The petitioner placed on record some additional documents and also filed an additional affidavit substantiating his stand that so far as the allegation relating to registration of an FIR by the Vigilance Bureau, Punjab, is concerned, the petitioner had no concern nor had been associated either by the department or by the Vigilance Bureau in preliminary investigation prior to lodging of FIR No. 37 of 1998. His name also does figure in the FIR. It has been further contended that the petitioner had applied for and was granted anticipatory bail by the Special Judge, Vigilance Patiala and which had been subsequently confirmed by the said Court. The order passed in respect thereto has been placed on record by the State as Annexure R1. The petitioner made an averment in the additional affidavit that in fact FIR 142 dated 26th August, 1998 had been filed against Dr. M.S. Sunar, and the proceedings in respect thereto are pending against Dr. M.S. Sunar. Apart from this, the counsel for the petitioner had requested that the record pertaining to passing of the orders for sending the petitioner on deputation by appointing him as Chairman-cum-Managing Director of PUNSEED and thereafter extensions having been granted for a period of one year to continue as Chairman-cum-Managing Director of PUNSEED and subsequently having been asked to continue only as Managing Director of PUNSEED till further orders, be summoned.

(9) We had directed *vide* order dated 27th May, 1999 that the Vigilance Department may apprise this Court *vis-a-vis* the current status of the enquiry that may have been conducted in pursuance of FIR No. 37 dated 30th April, 1998. In pursuance of the said directions, the respondents filed an affidavit of Shri Prag Jain, IPS, Joint Director, Vigilance Bureau Punjab. A perusal of the said affidavit necessitated that the record pertaining to appointment, extension and the subsequent orders passed in respect of the petitioner regarding his posting as Chairman-cum-Managing Director needs to be examined. In pursuance of the said directions, the State produced the record.

(10) We have heard the learned counsel for the parties at length. We have perused and taken into consideration the record produced by the respondent-State.

(11) Mr. Rajiv Atma Ram, learned counsel appearing for the petitioner contended as under :—

- (1) The second proviso to Rule 10 (2) of the Punjab Civil Services Rules, Vol. I Part-I is *ultra vires* and is not sustainable in view of the first proviso. The first proviso categorically provides that no Government employee may be transferred to foreign service in or out of India against his will whereas the second proviso gives power to the Govt. to transfer the employee without his consent, as such the second proviso is not sustainable.
- (2)(a) The petitioner could not have been sent on deputation by way of transfer/deputation to the post of Chairman-cum-Managing Director PUNSEED without obtaining his consent as envisaged under Rule 10(2) of the Punjab Civil Service Rules, Vol. I Part-I. Thus, transferring the petitioner/sending on deputation without consent is violative of the said Rule, as such is not sustainable. Initially the appointment was in utter violation of the said rule, thus, is bad in law.
- (b) The extension granted to the petitioner to continue as Chairman-cum-Managing Director, PUNSEED *vide* order dated 11th June, 1998 for a period of one year is also violative of Rule 10 (2) (*supra*), as no consent of the petitioner was obtained at the time of passing the order of extension.
- (c) The petitioner was further ordered to continue on the post of Managing Director alone *vide* order dated 11th June, 1999 again without taking his consent, is violative Rule 10(2) *supra*, as such the order is bad in law.
- (d) Even if tacit consent of the petitioner is inferred from his joining on the post of Chairman-cum-Managing Director, PUNSEED in the first instance but the subsequent order dated 10th June, 1999 *vide* which the petitioner had been asked to continue on the post of Managing Director, PUNSEED is not sustainable under law as the same had been passed without obtaining his consent. Even if having been passed without taking consent, such an order, could be passed by the government, only if passed in “public interest” as envisaged by the second proviso to Rule 10(2), which is neither reflected in any order passed by the Govt. nor is indicated in the pleadings on behalf of the Govt. nor it is discernible from the files produced by the Government.

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- (3) The post of Managing Director, PUNSEED, is lower in rank and status than the post of Director Agriculture. Petitioner cannot be sent on deputation to a post which is lower in rank and status than the one petitioner was holding in the Department of Agriculture.
- (4) The post of Director Agriculture being a single cadre post and the petitioner had successfully completed probation period and regularly appointed was subsequently transferred/sent on deputation from his substantive post to the post of Chairman-cum-Managing Director, PUNSEED. If the appointment of the petitioner to the post of Chairman-cum-Managing Director, PUNSEED is not sustainable under law, the petitioner upon repatriation is entitled to be appointed as Director Agriculture, Punjab being his substantive post.

(12) In respect of the first contention, the learned counsel for the petitioner drew our attention to rule 10(2) of the Punjab Civil Service Rules Vol. I Part I (hereinafter referred to as the CSR). The learned counsel submitted that the government is not entitled to transfer its employee to foreign service in or out of India against his will as is specifically contained and provided under the first proviso. Thus, in view of the categorical provision under the said Rule, it was incumbent upon the government to have obtained the consent of the petitioner before transferring/sending him on deputation from the substantive post of Director, Agriculture, Punjab to the post of Chairman-cum-Managing Director PUNSEED. It has been further contended that in second proviso under the said rule the power has been given to the government to transfer the employee without his consent but in "public interest", which according to the learned counsel runs counter to the first proviso and as such the provisos are not reconcilable. The second proviso is *ultra vires* to the scheme of the rules and also to the right of the employee as couched under the first proviso.

(13) In this regard reference has been made by the learned counsel to the judicial pronouncements made by the apex Court in *State of Punjab and others v. Inder Singh and others* (1) and *Sohan Singh v. State of Punjab and others* (2).

(14) Mr. P.S. Chhina, learned counsel for the respondents submitted that the second proviso is definitely in conformity with the first proviso because the power can be exercised by the government for transferring its employee without his consent only if it is in the public

(1) JT 1997 (8) S.C. 466

(2) 1970 SLR 291

interest, meaning thereby in the first instance if the transfer is not to be made in public interest, it is incumbent upon the government to obtain consent of its employee as contained under the first proviso but if the government considers that the transfer of its employee would be in "public interest", the government need not ask for the consent of its employee. Thus, the second proviso is *intra vires* and not *ultra vires*. In this context, it shall be appropriate to read the rule and for convenience, the same is reproduced as under :—

"10.2. (a) A competent authority may sanction the transfer of a Government employee to foreign service in or out of India:

Provided no Government employee may be transferred to foreign service in or out of India against his will :

Provided further that a Government employee, other than an employee working in the Punjab Vidhan Sabha Secretariat, may, in public interest, be transferred without his consent to foreign service under a company, a Corporation or a Body whether incorporated or not, which is wholly or substantially owned or controlled by the State Government or under a Municipal Corporation or a local body within the State of Punjab or under the Bhakra Beas Management Board or the Beas Construction Board :

Provided further that no Government employee shall be transferred to a post carrying pay which is less than or a pay scale the maximum of which is less than the basic pay he would have drawn but for his transfer to foreign service :

Provided further that no Government employee shall be transferred to foreign service unless the foreign employer undertakes to afford him, as far as, may be, privileges not inferior to those which he would have enjoyed under the Punjab Services (Medical Attendance) Rules, 1940, as amended from time to time, if he had been employed in the service of the Government of Punjab.

(aa) A Government employee, other than an employee working in the Punjab Vidhan Sabha Secretariat, may in public interest, be deputed without his consent to a post under the Administration of Union Territory, Chandigarh :

Provided that no Government employee shall be deputed under this clause to a post carrying pay which is less than or a pay

scale the maximum of which is less than the basic pay he would have drawn but for his deputation.

(b) xxx xxx xxx xxx

(15) Mr. Surya Kant learned counsel appearing for Dr. M.S. Sunar, drew our attention to rule 10(2) (aa) *ibid* in support of his submission to the effect that the government has very wide power for transferring its employee to any place which include to a post in the Administration of Union Territory, Chandigarh, without his consent.

(16) We are afraid, we cannot accept the contention of the learned counsel for the petitioner. A cumulative reading of the rule leads one to an irresistible conclusion that there are self contained restrictions and restraints which have been inculcated in the proviso by the government itself. The cardinal principle, *absolute power corrupts and the absolute power leads to absolutism* is well known. Both the proviso are complimentary to each other, that is, the employee cannot exercise absolute power by way of declining to give his consent to be transferred by the employer that is the Government. This absolute right has been diluted to a limited extent while providing the second proviso with a self contained restraint to the effect that the government may transfer without his consent an employee if it is in the "public interest" and the said public interest has been further circumscribed by specifically stating that the employee shall be transferred without his consent only to serve under "a Company, Corporation or a body whether incorporated or not which is wholly or substantially owned or controlled by the State Govt. or under a Municipal Corporation or a local body within the State of Punjab or under the Bhakra Beas Management Board or the Beas Construction Board" but the transfer should be in the public interest if it is to be made without the employee's consent. It is obvious that the power conferred by virtue of the rule in both the cases i.e. the employer and the employee has been sufficiently diluted with checks and balances. The citations referred to above by the learned counsel for the petitioner, have not dealt with the point at issue vis-a-vis vires of the second proviso to the scheme of the above said rules and the right of an employee, as such, the same are of no help in this regard. Such a situation in respect of both the *provisos* was not even under consideration in the aforesaid authorities.

(17) We, therefore, hold that the second proviso to rule 10(2)(a) is *intra vires* and definitely falls with the scheme of the rules as the proviso is self contained with the restrictions and restraints and is complimentary to the first proviso by way of diluting absolute right in

favour of the employee. Fear of absolutism both ways has been put under check and balance.

(18) The second contention of the learned counsel for the petitioner has been divided into four parts but are being dealt with collectively as the submissions are inter linked.

(19) It is admitted case of the petitioner that he was transferred/sent on deputation to the post of Chairman-cum-Managing Director of PUNSEED with effect from 11th June, 1997 and the petitioner did join on the said post. Even if no written consent was taken from the petitioner by the Government but the very fact that the petitioner joined on the post referred to above without any demur, a tacit consent can be safely inferred. Similarly, after granting the first extension, the petitioner continued to function on the post of Chairman-cum-Managing Director, PUNSEED. Again tacit consent can be safely inferred. The difficulty arose only when Shri Ashok Dhir, Advocate, was appointed as the Chairman of PUNSEED,—*vide* order dated 7th January, 1999 and under the orders of the government, he joined as such on 18th January, 1999 despite the fact that the extension had been granted in favour of the petitioner to continue in the post of Chairman-cum-Managing Director upto 11th June, 1999. It is borne out from the record that the petitioner did not accept his removal from the office of Chairman, PUNSEED and had in fact made a request to the government for repatriation to his parent department to be appointed against his substantive post of Director, Agriculture, Punjab. The government instead of repatriating the petitioner to the post of Director Agriculture, issued an order dated 10th June, 1999 asking the petitioner to continue in the post of Managing Director, PUNSEED. It is further borne out from the record that no consent of the petitioner had been obtained for passing such order to retain him on deputation in the post of Managing Director, PUNSEED. This situation led the petitioner to file the present petition.

(20) Learned counsel appearing for the petitioner drew our attention to the pleadings contained in the petition and also stated verbally that the petitioner would be agreeable to continue in the post of Chairman-cum-Managing Director but not on the post of Managing Director, PUNSEED alone. The tacit consent of the petitioner to be sent to deputation or to continue in the post of Chariman-cum-Managing Director cannot be taken as consent of the petitioner to be sent on deputation or to continue on deputation as Managing Director of the PUNSEED alone. The order dated 10th June, 1999 asking the petitioner to continue as Managing Director in PUNSEED does not serve any

public interest and is, therefore, violative of second proviso to Rule 10(2) supra.

(21) It has also been contended by the learned counsel for the petitioner that in making the petitioner to continue in the post of Managing Director would adversely affect the service conditions to the effect that the post of Managing Director is lower in rank than that of Director, Agriculture, Punjab. The learned counsel for the petitioner pointed out that the Managing Director is required to report to the Chairman of the Corporation and in this regard, reference has been made to the Manual of Instructions issued by the Department of Finance (Bureau of Public Enterprises) Punjab, for guidance of Public Sector Undertakings. The extract of the said guidelines is reproduced as hereunder :—

- “1. The Chairman shall be the authority to initiate the annual confidential report of the Managing Director. In respect of other senior officers for whom the Managing Director is the reporting authority, Chairman shall be the reviewing authority. In respect of officers for whom the Managing Director is reviewing authority, the Chairman shall be accepting authority.
2. All meetings of the Board of Directors shall be conveyed by the Managing Director on such date and time as is approved by the Chairman.
3. Agenda for the meeting of the Board of Director shall be drawn up by the Managing Director and shown to the Chairman. The Chairman shall be competent to add items to be included in the agenda.
4. All significant information concerning the functioning of the Corporation shall be made available by the Managing Director to the Chairman. In addition, the Chairman may call for information from Managing Director on any aspect of the working of the Corporation. However, as far as individual cases are concerned it will be open to the Chairman to discuss them with the Managing Director.
5. The Chairman may visit and check from time to time various field officers and operating units of the Corporation within the State. Points for action arising from such visits shall be communicated by the Chairman to the Managing Director.
6. Copies of the tour programme issued by various Senior Officers of the Corporations shall be endorsed to the Chairman.

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7. Whenever the Chairman so desires, he shall be associated with a meeting of the Field Staff convened by the Managing Director at the Corporation's headquarter.
 8. Ordinarily responsibility for furnishing reports to Government and undertaking correspondence with Government on behalf of the Corporation shall be with the Managing Director. However in important matters of policy, it shall be open to the Chairman to send a demi-official communication to the Administrative Secretary/Minister-in-charge.
 9. The Board of Director as a whole has final responsibility for direction and control under Laws, Rules and Regulation application to the Corporations/Autonomous Undertakings. Hence in the event of opinion between the Chairman and Managing Director, the concerned matter should be placed before the Board of Directors for decision.
 10. The Chairman should confine his powers of general guidelines to matters of board management and policy and leave day today administration of the affairs of the Corporation to the charge of the Managing Director. While undertaking his functions and exercising his powers, the Chairman should observe the established managements practices and in particular, the Managing Director should be the channel of communication."

(22) The learned counsel also contended that as Director Agriculture, the petitioner was Head of the Department and as such was required to report to Principal Secretary to Government of Punjab, Department of Agriculture whereas in the capacity of Managing Director, he has been brought down lower in rank and has been made answerable to the Chairman who is not equivalent to the rank of Principal Secretary to Government of Punjab. For the view we are taking on the question of 'public interest' in sending the petitioner on deputation to PUNSEED as Managing Director, it is not necessary to go into the question whether the post of Managing Director, PUNSEED, is lower in rank and status than the post of Director, Agriculture. Moreover, both the sides have not been able to give sufficient data or clear cut rules/instructions in this regard to answer this question.

(23) The only question which, according to us, requires to be determined is, whether the order transferring the petitioner from his substantive post to the post of Chairman-cum-Managing Director and the later order in asking him to continue only as Managing Director of PUNSEED, was passed in public interest or not meaning thereby

whether the orders fall within the scope of second proviso to Rule 10(2) supra. In this regard, respondents had been directed to produce the files which led to the passing of the orders by the Government from time to time. The said record was produced and the same has been perused in details. Though the point of 'public interest' was not raised in the pleadings yet we allowed it to be raised as the answer depended very much on the record of the State Government rather than on pleadings. It is well settled now, as to whether an order passed is in public interest or not, is justiciable.

(24) The learned counsel for the respondent contended that the petitioner having joined on the post of Chairman-cum-Managing Director upon the order of transfer/deputation clearly infers his tacit consent, as such the petitioner is not entitled to turn around and contend now that his consent was not taken, it is too late in the day to do so, therefore, the order of transfer/deputation is not bad in law. It has been further contended that the subsequent extensions are in continuation of the initial order, therefore, the implied consent can be safely inferred. It has also been contended that the post of Managing Director, PUNSEED is equivalent to the post of Director, Agriculture because on account of the previous practice, the post of Chairman was also held by a Senior IAS Officer and a junior IAS Officer was sometimes posted as Managing Director.

(25) Also contended that the petitioner had been transferred/sent on deputation from the post of Director, Agriculture because as per the policy of the Government, no person is entitled to continue in the post of Head of the Department for a period beyond five years and it was under these circumstances that the petitioner had been transferred/sent on deputation to the post of Chairman-cum-Managing Director.

(26) The perusal of the files produced by the State do not support the contention of the learned counsel for the respondents as the decision for sending the petitioner on deputation/transfer to the said post is not based on the State policy. Thus, the contention of the learned counsel for the respondents that the petitioner could not be retained on the post of Director, Agriculture as Head of the Department beyond a period of five years as per the policy of the government is not well founded. If the incumbent on a post as Head of the Department has sufficient period i.e. beyond five years till the age of superannuation, no executive instructions can reduce his period which is available to the incumbent as per the circumstances. This question arose before this Court in *Mohinder Lal Sandhu v. Chief Secretary to Govt. Punjab and others*, CWP 4794 of 1993 decided on 19th December, 1995 and this Court

had opined as under :

.....In our opinion, where requirement to a post is regulated by statutory rules, instructions like the one contained in letter dated 29th/30th April, 1965 have no application and a person, who is substantively appointed on the post encadred in the rules, cannot be deprived of his right to hold that post in the absence of any provision in the statute fixing a tenure, except in a case where he is removed from the post after the inquiry.”

(27) So far as the question of couching the order of transfer under public interest is concerned, the same is not supportable and it becomes clear from the perusal of files produced by the respondents wherein not a word has been mentioned that the petitioner was being transferred from the post of Director, Agriculture to the post of Chairman-cum-Managing Director in public interest but in response to the initial order of transfer dated 11th June, 1997 passed by the Government, no objection was raised by the petitioner and he had joined the said post without any demur, as such tacit consent is inferred. So far as the order of extension as Chariman-cum-Managing Director, is concerned, which has been passed on 17th July, 1998 for granting first extension for one year, has to be taken as a fresh order but again the petitioner having continued on the post of Chairman-cum-Managing Director, the tacit consent is inferred. It is only the subsequent order,—*vide* which the extension had been given, rather an order had been passed, asking the petitioner to continue only in the office of Managing Director, PUNSEED, the question of consent and passing the order in public interest became an issue. It is borne out from the record that no consent was taken from the petitioner asking him to continue in the office of Managing Director, PUNSEED. In fact the petitioner had asked to be repatriated to his parent Department of Agriculture on his substantive post of Director, Agriculture, Punjab. It is at this stage, the government could exercise its power under the second proviso which is definitely tainted with “public interest” but no public interest has either been spelt out in the files or in the impugned order. Not a word has been said as to what public interest would be served by sending or keeping the petitioner as Managing Director of PUNSEED. Thus, it is obvious that the impugned order dated 10th June, 1999 passed by the Financial Commissioner and Secretary to Government of Punjab, Department of Agriculture,—*vide* which the petitioner had been asked to continue on the post of Managing Director till further orders with effect from 12th June, 1999, is not sustainable as having not been passed in public interest or after obtaining consent of the petitioner.

(28) The learned counsel for the petitioner submitted in respect of his contention that the post of Director, Agriculture, Punjab, is a

single cadre post and the petitioner had been transferred/sent on deputation from the said post which had been substantively held by him. Thus, in the eventuality of being repatriated to his parent department, he would be entitled to be posted back to his substantive post that is Director of Agriculture, Punjab. We refrain ourselves from dealing with this contention as the same is pre-mature. If on repatriation the petitioner is not given posting in accordance with law as per the petitioner, he would be at liberty to challenge the same before an appropriate forum.

(29) For the foregoing discussion, we allow this petition by way of granting writ of certiorari and quash the impugned order dated 10th June, 1999,—*vide* which the petitioner has been ordered to continue on the post of Managing Director, PUNSEED till further orders. However, the Government is at liberty to re-appoint the petitioner as Chariman-cum-Managing Director, PUNSEED for which he has given the consent in the petition and also verbally. In case the Government does not decide to post the petitioner as Chairman-cum-Managing Director, PUNSEED, the Government shall recall the petitioner and give him posting in accordance with law. No order as to costs.

R.N.R.

Before N.K. Sodhi and N.K. Sud, JJ.

KAMAL SOOD,—*Petitioner:*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

C.W.P. No. 1887 of 1999

26th October, 1999

Finance Act, 1997—S. 67(2)—Voluntary Disclosure of Income Scheme, 1997—Declarant under V.D.I.S. depositing tax alongwith interest late by one day—No explanation for delay—Commissioner was within jurisdiction in rejecting the declaration under section 67(2) which does not give power to condone delay in depositing tax—Scheme is to be construed strictly—The 90 days period granted for depositing tax from the date of declaration cannot be extended.

[Smt. Laxmi Mittal v. Commissioner of Income Tax, 238 I.T.R. 97 (D.B.), dissented]

Held that, the Commissioner was right in rejecting the declaration filed by the petitioner. Section 67(2) of the Finance Act clearly stipulates that if the declarant fails to pay tax in respect of the voluntarily disclosed income before expiry of three months from the date of filing